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Of Counsel
John Taylor Williams
David L. Kelston

July 25, 2014

BY CERTIFIED MAIL

Curt Spalding, Regional Administrator
EPA New England, Region 1,
5 Post Office Square, Suite 100
Boston, MA 02109-3912
Certified # 7012 2210 0001 3554 3000

Gina McCarthy, Administrator
U.S. EPA Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
Certified # 7012 2210 0001 3554 3017

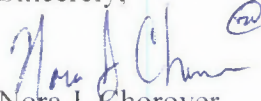
U.S. Department of Justice
Citizen Suit Coordinator
Environmental and Natural Resource
Division Law and Policy Section
P.O. Box 7611
Washington, D.C. 20044-7611
Certified # 7012 2210 0001 3554 3024

Re: Notice of Proposed Consent Decree in Clean Water Action v. J Donovan & Son,
Inc., Civil Action No. 14-30005-KPN

Dear Sirs and Madam:

Enclosed pursuant to 40 CFR § 135.5 please find an executed copy of the parties' proposed Consent Decree resolving the above captioned action brought under the citizen suit provision of the Federal Water Pollution Control Act. Please feel free to call me if you have any questions about the enclosed. Thank you.

Sincerely,


Nora J. Chorover

Enclosures

cc: Elisabeth C. Goodman, Esq.
Cain Hibbard & Myers PC
377 Main Street
Williamstown, MA 01267

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

CLEAN WATER ACTION,

Plaintiff,

v.

J. DONOVAN & SON, INC.,

Defendant.

Case No.: 3:14-cv-30005-KPN

CONSENT DECREE

WHEREAS, plaintiff Clean Water Action ("Clean Water Action") is a nationwide non-profit organization working for prevention of pollution in the nation's waters, protection of natural resources, creation of environmentally-safe jobs and businesses, and empowerment of people to make democracy work:

WHEREAS, defendant J. Donovan & Son, Inc. ("J. Donovan"), operates a construction sand and gravel facility at and around 29 Cherry Hill Road in Stockbridge, Massachusetts that is the subject of this lawsuit (the "Facility");

WHEREAS, Clean Water Action alleges that stormwater from the Facility discharges to wetlands and waterways adjacent to the Facility, which discharge to the Housatonic River and that these stormwater discharges are regulated pursuant to the federal Clean Water Act (the "Act") and covered by the Final National Pollutant Discharge Elimination System ("NPDES") Multi-Sector General Permit issued by the United States Environmental Protection Agency (the "Storm Water Permit"). *See* U.S.C. §§ 1311(a), 1342(a), 1342(p); 65 Fed. Reg. 64746 (Oct. 30, 2000); 73 Fed. Reg. 56572 (Sept. 29, 2008);

WHEREAS, on October 11, 2013, Clean Water Action provided notice of alleged violations of the Act, and of Clean Water Action's intention to file suit against J Donovan, to the Administrator of the United States Environmental Protection Agency ("EPA"); the Administrator of EPA Region I; the Massachusetts Department of Environmental Protection; and to J Donovan, pursuant to Section 505 of the Act, 33 U.S.C. § 1365;

WHEREAS, following receipt of the October 11, 2013 Notice, J Donovan has taken certain steps, including the hiring of a stormwater consultant, inspection, revision of storage procedures and clean-up of the Facility, and identification of certain areas of the Facility to be addressed in connection with stormwater compliance;

WHEREAS, J Donovan has contacted the United States Army Corps of Engineers and has requested a jurisdictional determination be made by the Army Corps, and this process is still underway;

WHEREAS, J Donovan anticipates that these steps, together with implementation of the Best Management Practices ("BMPs") and other measures set forth herein and in J Donovan's updated SWPPPs for the Facility, will enable him to comply with applicable state water quality standards and any applicable benchmark concentrations or other effluent standards set forth in the Storm Water Permit;

WHEREAS, J Donovan denies the allegations of Clean Water Action that J Donovan has violated the Storm Water Permit or the Act;

WHEREAS, the parties have decided that it is in the best interest of all parties to resolve the litigation by agreement without adjudication of any fact, allegation or law set forth above; and

WHEREAS, this Consent Decree ("Consent Decree") shall be submitted to the United States Department of Justice for the forty-five (45) day statutory review period, pursuant to 33 U.S.C. § 1365(c).

NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE SETTLING PARTIES, AND ORDERED AND DECREED BY THE COURT, AS FOLLOWS:

INJUNCTIVE RELIEF

1. J Donovan agrees to operate the Facility in compliance with the applicable requirements of the Storm Water Permit and the Act, including any amendments to the Storm Water Permit or the Act and subject to any jurisdictional determination that may be made during the term of this Consent Decree.

2. Unless and until J Donovan obtains a determination from the Army Corps that his activity on the site is not subject to jurisdiction under the Clean Water Act, it shall implement the following measures:

A. Compliance Monitoring. J Donovan shall ensure that stormwater samples collected are "representative of the volume and nature of the monitored activity." J Donovan shall comply with the terms of the Storm Water Permit, including Section 6 of the Permit, and with Appendix B, sections 10-12, thereto. J Donovan shall follow the applicable procedures set forth in EPA's Industrial Storm Water Monitoring and Sampling Guide (March 2009) ("Sampling Guide") and J Donovan's updated SWPPP. Sampling events shall be preceded by at least three (3) calendar days without storm water having been discharged from the sampled outfalls. J Donovan shall provide Clean Water Action with copies of the analytical laboratory results of the sampling within seven (7) business days of receiving them. Nothing in this paragraph limits J Donovan's sampling obligations under the Storm Water Permit.

B. Reporting Practices. J Donovan shall report monitoring data collected pursuant to the Storm Water Permit to EPA in accordance with section 7.1 of the Storm Water Permit and shall note information required under Section 6 of the Storm Water Permit and, to the extent applicable, Appendix B, sections 10-12, thereto.

C. Control Measures. Upon the Effective Date of this Consent Decree, J Donovan shall do the following: 1. Maintain a vegetated earthen berm at the top of the hill near the primary sand pile and 2. Maintain a vegetated earthen berm across the road at the intake pond so that stormwater runoff does not directly reach the intake pond.

E. Involvement by Clean Water Action.

1) J Donovan shall permit representatives of Clean Water Action to perform up to two site visits to the Facility during normal daylight business hours during each year that this Consent Decree is in effect, provided that Clean Water Action notifies J Donovan in writing at least two (2) business days in advance of any such site visit.

2) For the term of this Consent Decree, J Donovan shall provide Clean Water Action with copies of all documents that it submits to EPA, the Commonwealth of Massachusetts and/or the Town of Stockbridge concerning the Facility's stormwater discharges, including but not limited to (a) all documents concerning the installation of any berms; (b) all documents and reports submitted as required by the Storm Water Permit; (c) all laboratory reports and analytical results of storm water sampling performed by or for J Donovan; and (d) all reports of the quarterly and annual Facility inspections and visual assessments required by the Permit. Any documents submitted to a

governmental entity pursuant to this sub-paragraph, such as quarterly Discharge Monitoring Reports ("DMRs"), Annual Reporting Forms, or documents concerning approval of any berm improvements shall be submitted to Clean Water Action by emailing them to nchorover@sswg.com contemporaneously with submission to the governmental entity. J Donovan Quarterly Visual Inspection Forms, Quarterly Visual Monitoring Inspection Forms and Quarterly Sampling Analytical Forms, including laboratory results for the samples, shall be submitted to Clean Water Action with the Annual Report.

PAYMENT, FEES AND COSTS

3. Within 15 days after the Effective Date of this Consent Decree, J Donovan shall pay the sum of \$23,000 to the Housatonic River Initiative for use on projects benefitting water quality in the Housatonic River (the "Payment"). The Payment shall be conditioned on the following: (a) the Payment or any portion thereof shall not be disbursed or otherwise granted directly or indirectly to Clean Water Action; and (b) projects funded by the Payment shall be designed to benefit water quality within thirty (30) miles of the Facility. The Payment shall be made out to the Housatonic River Initiative and shall be delivered by certified mail, return receipt requested to: Tim Gray, Housatonic River initiative, P.O. Box 321, Lenox Dale, MA 01242. A copy of such Payment shall be provided to Clean Water Action.

4. Within 15 days after the Effective Date of this Consent Decree, J Donovan shall pay the sum of \$2,000 to the Housatonic Valley Association for use on projects benefitting water quality in the Housatonic River (the "Payment"). The Payment shall be conditioned on the following: (a) the Payment or any portion thereof shall not be disbursed or otherwise granted directly or

indirectly to Clean Water Action; and (b) projects funded by the Payment shall be designed to benefit water quality within thirty (30) miles of the Facility. The Payment shall be made out to the Housatonic Valley Association and shall be delivered by certified mail, return receipt requested to: Lynn Werner, Housatonic Valley Association, P.O. Box 251, South Lee, MA 01260. A copy of such Payment shall be provided to Clean Water Action.

5. Within thirty (30) days after the Effective Date of this Consent Decree, J Donovan shall reimburse Clean Water Action in the amount of \$17,500 to defray Clean Water Action's investigation fees and costs, expert fees and costs, and attorneys' fees incurred up to the date of entry of this Consent Decree. Payments shall be made by certified check or money order, made out to Stern, Shapiro, Weissberg & Garin, LLP, Client Trust Account, and be delivered by certified mail, return receipt requested, to Nora J. Chorover, at the address listed in paragraph 17.

5. Within sixty (60) days after the Effective Date of this Consent Decree, J Donovan shall pay to Clean Water Action \$5,000 to be placed in an escrow account held by Elisabeth C. Goodman, Esq. to be used to reimburse Clean Water Action for fees and costs incurred to monitor J Donovan's compliance with this Consent Decree for a term of three years after the Effective Date of this Consent Decree. If there is a final determination from the U.S. Army Corps of Engineers that there is no Clean Water Act jurisdiction over J Donovan's activities on this property, then the escrow funds shall be immediately returned to J. Donovan by Elisabeth C. Goodman. If there is a determination that there is federal Clean Water Act jurisdiction, then any funds remaining from the \$5,000 at the expiration of the three year term shall be remitted to J Donovan within thirty (30) days of the expiration of the three year term. Nothing in this paragraph shall restrict Clean Water Action's right to seek additional compensation for fees and costs it incurs to address J Donovan's noncompliance with this Consent Decree.

EFFECTIVE DATE OF CONSENT DECREE

6. The parties recognize that, pursuant to 33 U.S.C. §1365(c)(3), this Consent Decree cannot be entered until forty-five (45) days after the receipt of a copy of the proposed Consent Decree by the United States Attorney General and the EPA. Therefore, upon signing of this Consent Decree by the parties, Clean Water Action shall serve, or cause to be served, copies of this Consent Decree upon the EPA Administrator, the Regional EPA Administrator, and the Attorney General for review, as required by 40 C.F.R. §135.5. Upon the expiration of the forty-five (45) day review period provided by 33 U.S.C. §1365(c)(3), the parties will jointly move the Court for entry of this Consent Decree and issuance of a Final Judgment and jointly seek a Dismissal with Prejudice. The date that the Court enters the Consent Decree is the Effective Date of this Consent Decree.

RELEASE

7. Upon the Effective Date of this Consent Decree, Clean Water Action, on its own behalf and on behalf of its members, parents, subsidiaries, affiliates, successors, assigns, directors, officers, agents, attorneys, representatives, and employees, releases J Donovan and all its members, parents, subsidiaries, affiliates, directors, officers, agents, attorneys, representatives, employees, predecessors in interest in or title to the Facility, successors, and assigns from, and waives forever all claims, whether known or unknown, for damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or which could have been claimed in this Action, for the alleged failure to comply with the Act and the Storm Water Permit at the Facility, up to and including the Effective Date of this Consent Decree. Clean Water Action does not release any claims to enforce any term of this Consent Decree.

8. J Donovan, on its own behalf and on behalf of its parents, subsidiaries, affiliates, predecessors in interest in or title to the Facility, successors, assigns, directors, officers, agents, attorneys, representatives, and employees, releases Clean Water Action and its members, subsidiaries, affiliates, successors, assigns, directors, officers, agents, attorneys, representatives, and employees from, and waives forever all claims, whether known or unknown, which arise from or pertain to this Action, including all claims for fees (including fees of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or which could have been claimed for matters associated with or related to this Action up to and including the Effective Date of this Consent Decree. J Donovan does not release any claims to enforce any term of this Consent Decree.

MISCELLANEOUS PROVISIONS

9. This Consent Decree was entered by the parties as a settlement of disputed matters, and neither this Consent Decree or any action taken pursuant to it shall be construed as an admission of any fact or liability, either expressed or implied; and this Consent Decree shall not be offered by the parties hereto or any other person as evidence of any alleged fact or liability, nor entered in any legal or administrative proceeding for any purpose other than to enforce the terms hereof.

10. The Term of this Consent Decree shall be three (3) years after the Effective Date.

11. This Consent Decree shall be binding on the parties and on their respective successors and assigns.

12. This Consent Decree may be executed in one or more counterparts which, taken together, shall be deemed to constitute one and the same document.

13. In the event that any of the provisions of this Consent Decree is held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

14. The language in all parts of this Consent Decree, unless otherwise stated, shall be construed according to its plain and ordinary meaning.
15. The undersigned are authorized to execute this Consent Decree on behalf of their respective parties and have read, understood and agreed to all of the terms and conditions of this Consent Decree.
16. All agreements, covenants, representations and warranties, express or implied, oral or written, of the parties concerning the subject matter of this Consent Decree are contained herein.
17. Any notices or documents required or provided for by this Consent Decree or related thereto that are to be provided to Clean Water Action pursuant to this Consent Decree shall be hand delivered or sent by U.S. Mail, postage prepaid, and addressed as follows, or sent via electronic mail to:

Nora J. Chorover
Attorney for Clean Water Action
Stern, Shapiro, Weissberg & Garin, LLP
90 Canal Street, 5th Floor
Boston, MA 02114
nchorover@sswg.com

Any notices or documents required or provided for by this Consent Decree or related thereto that are to be provided to J Donovan pursuant to this Consent Decree shall be sent by U.S. Mail, postage prepaid, and addressed as follows, or sent via electronic mail to:

Elisabeth C. Goodman, Esq.
377 Main Street
Williamstown, MA 01267

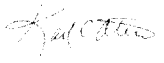
Each party shall notify the other parties of any change in their contact information within fourteen (14) days of any such change.

18. Signatures of the parties transmitted by facsimile or electronic mail are binding.

19. If for any reason the Court should decline to approve this Consent Decree in the form presented, the parties shall agree to work together to modify this Consent Decree within thirty (30) days to endeavor to make it acceptable to the Court.

20. This Court shall retain jurisdiction over this matter and allow this action to be reopened for the purpose of enabling the Parties to this Consent Decree to apply to the Court for any further order that may be necessary to construe, carry out, enforce compliance and/or resolve any dispute regarding the terms or conditions of this Consent Decree.

Clean Water Action

By:  Dated: July 24, 2014
Kathleen E. Aterno

J. Donovan and Son, Inc.

By: _____ Dated: _____

APPROVED:

Any notices or documents required or provided for by this Consent Decree or related thereto that are to be provided to J Donovan pursuant to this Consent Decree shall be sent by U.S. Mail, postage prepaid, and addressed as follows, or sent via electronic mail to:

Elisabeth C. Goodman, Esq.
377 Main Street
Williamstown, MA 01267

Each party shall notify the other parties of any change in their contact information within fourteen (14) days of any such change.

18. Signatures of the parties transmitted by facsimile or electronic mail are binding.

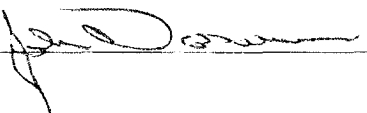
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Clean Water Action

By: _____ Dated: _____

J. Donovan and Son, Inc.

By:  _____ Dated: 7-19-14

APPROVED: